

**EMERGENCY**

**IN THE SUPREME COURT FOR THE STATE OF ALASKA**

THE ALASKA CENTER EDUCATION  
FUND, ALASKA PUBLIC INTEREST  
RESEARCH GROUP, and FLOYD  
TOMKINS,

Petitioners,

v.

GAIL FENUMIAI, in her official capacity as  
the Director of the Alaska Division of  
Elections, KEVIN MEYER, in his official  
capacity as the Lieutenant Governor of Alaska;  
and THE STATE OF ALASKA, DIVISION  
OF ELECTIONS,

Respondents.

Trial Case No.: 3AN-20-08354 CI

Supreme Court Case No.: S-\_\_\_\_\_

**EMERGENCY MOTION FOR EXPEDITED ORAL ARGUMENT AND  
DECISION ON PETITION FOR REVIEW  
(Appellate Rule 504)**

Petitioners the Alaska Center Education Fund, Alaska Public Interest Research Group, and Floyd Tomkins respectfully request that the Court consider their Petition for Review, filed today, on an emergency basis. Expedited action is necessary because this dispute concerns Alaskans' fundamental right to vote—and ability to have their vote—as well as constitutionally-protected due process of law, in the upcoming November 3, 2020 General Election. Over 116 voters who

already took the time and made the effort to register to vote, request an absentee mail-in ballot, fill out their absentee mail-in ballot, procure and put a stamp on it, and send it to the Division of Elections—clearly evincing an intent to vote—have had their mail-in absentee ballots flagged for rejection, based on the Division’s publicly available data.<sup>1</sup> But under Alaska law, these voters need not and should not be disenfranchised if their ballots are slated for rejection based on an inadvertent missing voter signature or identifier (driver’s license number, date of birth, last four digits of social security number, or voter number) if they are able to correct those mistakes before the Division must certify election results on November 18, 2020.

On October 15, 2020, the Superior Court denied Petitioners’ motion for a preliminary injunction that sought to require Respondents to apply the Alaska Statutes to allow all voters who are determined to have submitted an absentee ballot envelope without a voter signature or identifier with reasonable notice of the omission and an opportunity to cure it prior to the deadline for counting all absentee votes and certifying the election on November 18. Respondents’ own

---

<sup>1</sup> See State of Alaska - Division of Election, Combined Ballot Count Report at [https://www.elections.alaska.gov/results/20GENR/data/sovc/CombinedBallotCountReport\\_Server.pdf](https://www.elections.alaska.gov/results/20GENR/data/sovc/CombinedBallotCountReport_Server.pdf).

data shows that hundreds of eligible Alaska voters have been disenfranchised in past elections due to missing voter signatures or identifiers accompanying their absentee mail ballot. If the Superior Court's denial is not reversed and an injunction is not ordered, it is a statistical certainty that hundreds of Alaska voters who made an honest mistake—if not more, given that Respondents have sent *four times* more absentee mail ballots for the upcoming election than ever before—will be needlessly disenfranchised, which this Court's precedent counsels against.

For these reasons, Petitioners request oral argument and a decision from this Court by October 23, 2020. In support of that, Petitioners propose that Respondents file their response by the close of business on October 21, and that Petitioners' file a reply by close of business on October 22.

This briefing and decision schedule will ensure that Respondents have time *before* the Absentee Ballot Review Boards begin formally reviewing ballot certificates (starting October 27th) to implement any process necessary to provide voters with the requested notice based on Respondents' existing ballot logging software, and to finalize a cure affidavit that can be posted online or sent to voters whose ballots are flagged for rejection based on a missing voter signature or identifier using the contact information for voters that Respondents already have.

Counsel for the Petitioners have notified counsel for Respondents of

Petitioners' intention to file this emergency motion and the accompanying petition for review. All grounds advanced in support of this motion were submitted to the Superior Court. This motion is based upon Alaska Rules of Appellate Procedure 402 and 504 and is supported by the attached affidavit of counsel and written statement of facts.

Opposing counsels' telephone numbers and addresses are:

Lael A. Harrison  
Assistant Attorney General  
Alaska Department of Law  
P.O. Box 110300  
Juneau, AK 99811-0300  
907-465-3600  
lael.harrison@alaska.gov

Thomas S. Flynn  
Assistant Attorney General  
Alaska Department of Law  
1031 West Fourth Avenue, Suite 200  
Anchorage, AK 99501  
907-269-5275  
thomas.flynn@alaska.gov

Jessie Alloway  
Assistant Attorney General  
Alaska Department of Law  
1031 West Fourth Avenue, Suite 200  
Anchorage, AK 99501  
907-269-5275  
jessie.alloway@alaska.gov

DATED: October 19, 2020.

**PERKINS COIE LLP**



Kevin R. Feldis, Alaska Bar No. 9711060

[KFeldis@perkinscoie.com](mailto:KFeldis@perkinscoie.com)

Sarah L. Schirack, Alaska Bar No. 1505075

[SSchirack@perkinscoie.com](mailto:SSchirack@perkinscoie.com)

PERKINS COIE LLP

1029 West Third Avenue, Suite 300

Anchorage, AK 99501-1981

Telephone: 907.279.8561

Facsimile: 907.276.3108

Alexi M. Velez, *Pro Hac Vice*

[AVelez@perkinscoie.com](mailto:AVelez@perkinscoie.com)

PERKINS COIE LLP

700 Thirteenth Street, N.W., Suite 800

Washington, D.C. 20005-3960

Telephone: 202.654.6200

Facsimile: 202.654.6211

Attorney for Plaintiffs